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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1047 42

FARMERS GRAIN COMPANY, A CORPORATION, ET AL.,
Petitioners,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, ET AL., AND TOLEDO, PEORIA & WESTERN RAILROAD, A CORPORATION,
Respondents.

BRIEF OF RESPONDENT RAILROAD IN OPPOSITION TO PETITION OF SHIPPERS FOR A WRIT OF CERTIORARI.

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OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals is reported in 158 F. (2d) 109, and the opinion of the District Court is reported in 66 F. Supp. 845.

ADDITIONAL STATEMENT OF THE CASE.

Petitioner Shippers pray that this Court command the Circuit Court of Appeals "to certify and send to this court for its review and determination the transcript of record filed therein in this cause below" (Shippers' Petition and Brief, p. 7). It is difficult to reconcile this prayer with the fact that the transcript of record in this case was certified and forwarded by the Clerk of the Circuit Court of Appeals to the Clerk of this Court long ago.

The important fact appears to be that the record has not been printed or distributed to this Court or counsel in accordance with Supreme Court Rule 38. This Court is therefore unable to determine the accuracy of the innuendoes indulged in throughout Shippers' Petition and Brief. The barrage of personal attacks against Respondent Railroad's president may probably be explained by the fact, as this Court may recall, that two of the attorneys for Petitioner Shippers in this case were counsel for the Brotherhoods in the injunction case heard by this Court three years ago. *Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al.* v. *Toledo, Peoria & Western Railroad*, 321 U. S. 50 (1944). That fact was noted by the Circuit Court of Appeals in this case (158 F. (2d) 109, 110-111).

In their petition, Petitioner Shippers adopt the position of Respondent Railroad that the shippers have no interest in any dispute between the Brotherhoods and Respondent Railroad (Shippers' Petition and Brief, p. 5), and in their Brief they criticize the opinion of the Circuit Court of Appeals for overemphasizing the labor controversy (Shippers' Petition and Brief, p. 11). Yet Petitioner Shippers devote most of their attention, in the statement of the case and in

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the argument, to a discussion of their views of that controversy.

Petitioner Shippers correctly state that Respondent Railroad has conceded that the shippers are entitled to relief, and that Respondent Railroad is unwilling to voice any objection to the mandatory injunction directed against it to remedy the wrong done the shipping public (Shippers' Petition and Brief, p. 5). Petitioner Shippers frankly state:

> "The only question in issue then, is the form of relief to be granted." (Shippers' Petition and Brief, p. 5), and
>
> "The case thus narrows down to whether the District Court properly appointed a receiver in this case." (Shippers' Petition and Brief, p. 11.)

The same single issue is clearly set forth as "the question presented" (Shippers' Petition and Brief, p. 6), and Respondent Railroad is in complete agreement with Petitioner Shippers that that is the only issue on this Petition for a Writ of Certiorari.

Under that single issue it does appear, as suggested by Petitioner Shippers, that the details of any labor controversy are quite immaterial. It should be sufficient for the purposes of this case to point out that in 1944 this Court held that Respondent Railroad had made every reasonable effort to settle the dispute by negotiation and mediation. *Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, et al.* v. *Toledo, Peoria & Western Railroad,* 321 U. S. 50, 64. Since that time, as pointed out by the Circuit Court of Appeals in this case, Respondent Railroad has offered to arbitrate before an arbitrator appointed either by the senior federal judge of the district, or by the trial judge, or by the senior circuit judge, or by the Illinois Commerce Commission, or by the National Mediation Board under the terms of the Railway Labor Act, and the Brother-

hoods have rejected all of those arbitration proposals (158 F. (2d) 109, 117).

It is suggested that the only facts material to the issue presented by this Petition are: (1) the interruption of railroad service with the resultant injury to the shippers; (2) the institution of the action by the shippers for relief, with specific prayer for the appointment of a receiver; (3) the appointment of a receiver by the District Court as the ultimate and final relief; (4) the reversal of that decision by the Circuit Court of Appeals on the ground that the appointment of a receiver in this case was improper; and (5) the direction by the Circuit Court of Appeals of a mandatory injunction against Respondent Railroad which has proved to be an effective remedy for restoring transportation service to the shippers.

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ARGUMENT.

I.

The Decision of the Circuit Court of Appeals Is in Full Accord With the Decisions of This Court.

Upon the only issue involved in this Petition, the Circuit Court of Appeals in this case stated:

> "It is clear that the ultimate aim of the action was the appointment of a receiver for the sole purpose of operating the railroad, without any limitation as to time, and not being ancillary to other equitable or legal relief sought. Under these circumstances, we think the decree was improper." (158 F. (2d) 109, 116.)

That decision was required by the line of decisions of this Court which hold that a receivership in such a case is improper and constitutes an abuse of discretion by a court of equity. This Court stated in 1923:

> "Whether the debtor be an individual or a corporation, the appointment of a receiver is merely an ancillary and incidental remedy. A receivership is not final relief. The appointment determines no substantive right, nor is it a step in the determination of such a right. It is a means of preserving property which may ultimately be applied toward the satisfaction of substantive rights." *Pusey & Jones Co.* v. *Hanssen*, 261 U. S. 491, 497.

In the case of *Gordon, et al.* v. *Washington, et al.*, 295 U. S. 30 (1935), this Court stated at pages 37 and 38:

> "A receivership is only a means to reach some legitimate end sought through the exercise of the power of a court of equity. It is not an end in itself. * * * There is no occasion for a court of equity to appoint a receiver of property of which it is asked to make no

> further disposition. The English Chancery Court from the beginning declined to exercise its jurisdiction for that purpose. * * * Whenever the attempt thus to extend it, by using the receivership as an end instead of a means, has been brought to the attention of this Court, it has pointed out that a federal court of equity will not appoint a receiver where the appointment is not ancillary to some form of final relief which is appropriate for equity to give."

This point was made perfectly clear in 1941 by this Court in the case of *Kelleam, et al.* v. *Maryland Casualty Co., et al.*, 312 U. S. 377, at page 381:

> "This Court has frequently admonished that a federal court of equity should not appoint a receiver where the appointment is not a remedy auxiliary to some primary relief which is sought and which equity may appropriately grant."

These cases constitute a continuous line of authority, and no decision of this Court has been found which expresses a contrary rule. It is respectfully suggested that the decisions of this Court cited by Petitoner Shippers, apparently in support of their belief that the receiver was properly appointed, are hopelessly out of point and have no bearing on the issue in this case. Those decisions, and the decisions of the lower federal courts also cited, are authority for the general propositions that equitable remedies are not inflexible and that the appointment of a receiver generally rests in the sound discretion of the chancellor. Respondent Railroad does not question those principles, but points out that this Court has established a clear limit on the exercise of that discretion, which limit prevents the appointment of a receiver as the sole and final remedy in the case at bar.

Petitioner Shippers rely wholly upon the supposed conflict between decisions of this Court and the decision of the Circuit Court of Appeals in this case, as their reason for

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issuance of the Writ of Certiorari (Shippers' Petition and Brief, p. 7). Since no such conflict exists, but rather the decision of the Circuit Court of Appeals is in full accord with the decisions of this Court on the point involved, Petitioner Shippers have wholly failed to show the existence of any reason for the granting of their petition.

II.

The Receivership Would Be an Inequitable Remedy and Would Violate the Fundamental Rights of the Parties.

Petitioner Shippers state that the only practical and effective remedy for the wrong suffered by them is the appointment of a receiver and that the mandatory injunction will not be effective (Shippers' Petition and Brief, pp. 5, 6, 15).

There can be only two possibilities under which the receivership ordered by the District Court might be more effective in restoring transportation service than the mandatory injunction ordered by the Circuit Court of Appeals. Those two possibilities are either, (1) the receiver would accede to every demand of the Brotherhoods and enter into a contract that is not acceptable to Respondent Railroad, or (2) the Brotherhoods would make some agreement with the receiver that they are unwilling to make with Respondent Railroad because of the personalities involved. Unless one of those conditions prevails, the effectiveness of the receivership and the mandatory injunction, in restoring transportation service, would be precisely the same.

There can be no contention that a refusal to reach a bargain because of the personalities involved is a justifiable position or one that will receive the aid of a court of equity. Even if that position could be supported on any theory, it is at once apparent that operation by a receiver under those

circumstances would continue indefinitely until the managers and owners had been forced to withdraw and had been replaced by other persons acceptable to the Brotherhoods. Such a taking and withholding of property rights to meet the personal whims or desires of the opposite party to a dispute can find no support in the law.

In the only other possible situation, where the receiver would grant all of the Brotherhoods' demands, the inequity of the receivership is no less apparent. The receivership would necessarily continue until Respondent Railroad accepted those same demands. Respondent Railroad would have only two alternatives: it could either make a contract that it was unwilling to make or it could forego the right of managing its properties forever. It is perfectly clear under the decisions of this Court, however, that neither Respondent Railroad nor the Brotherhoods can be compelled to enter into an agreement that is not mutually satisfactory to them. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515 (1937); *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U. S. 1 (1937). The making of an agreement by a receiver, contrary to the desire of Respondent Railroad, to be performed with the funds and the properties of Respondent Railroad, and the continuation of the receivership until that agreement was adopted by Respondent Railroad, would be the clearest kind of compulsion.

III.

The Receivership Would Be Inconsistent With All Current Concepts of Labor-Management Rights and Relations.

The appointment of a receiver for the purpose of settling a labor dispute finds its only precedent in the war-time seizures of plants and facilities under the war powers of the

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executive branch of the government, but there has been and can be no contention that some emergency power justified the judgment of the District Court in this case.

If the receivership were a proper remedy in this case, there would be no labor-management problem today. There would be no occasion for the nation-wide thinking and discussion, and the current congressional committee activities and debate, on such matters as emergency boards, fact finding boards, mediation and conciliation agencies, voluntary or compulsory arbitration, and all of the other old and new methods of avoiding or settling industrial strife. All of those processes are cumbersome, indeed, in comparison with the summary appointment of an equity receiver to effect immediate settlement of a dispute. That cumbersomeness has been accepted by everyone on all sides, however, as a necessary incident in preserving to the parties their fundamental right under the laws of the land—the right to agree or disagree on conditions of employment. Any attempt to alter or destroy those rights by judicial fiat is improper.

If the receivership were a proper remedy in this case, then it would be proper to appoint one or many receivers to force settlement of a labor dispute involving all of the railroads in the country, or involving any or all public utilities. Receiverships would be equally proper to force settlement of a labor dispute involving any basic or important industry, the disruption of which could cause loss or inconvenience to someone, such as coal, steel, automobiles, clothing, food, *et cetera;* because, while such industries do not have the same obligation to render service, they have no greater rights than railroads or public utilities to make their own managerial decisions regarding conditions of employment. The use of an equity receivership to settle a labor dispute, if adopted in this case, can be expected to be utilized in almost any conceivable labor dispute hereafter.

If federal courts of equity are going to pass upon the reasonableness of the business and economic decisions of employers and appoint receivers to make opposite decisions, then there is no reason why we shall not soon be treated to the spectacle of the appointment of a receiver to sell the livestock of a farmer who, in the opinion of some chancellor, is unreasonably withholding his livestock from market.

The only possible distinction between the railroad and the farmer, or any other business, is that the railroad has a statutory obligation to render service. That obligation can be enforced by a mandatory injunction, as ordered by the Circuit Court of Appeals in this case, and there is no more occasion to force the settlement of a labor dispute on a railroad than there is to force the settlement of a dispute in any other business or occupation.

The far-reaching implications of the injection of receiverships into the labor-management picture are truly disturbing.

Conclusion.

The decision of the District Court was in direct conflict with all of the applicable decisions of this Court, was wholly inconsistent with the right of Respondent Railroad to manage its properties, and was properly reversed by the Circuit Court of Appeals. The decision of the Circuit Court of Appeals in this case is in full accord with the applicable decisions of this Court, and there is no necessity for its review.

It is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

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